

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF LAWRENCEBURG GAS)
COMPANY, AN INDIANA CORPORATION,)
FOR APPROVAL OF GAS COST) CAUSE NO. 37368 GCA 98 S1
ADJUSTMENTS TO BE APPLICABLE)
DURING THE MONTHS OF MAY, JUNE,) APPROVED: OCT 15 2008
AND JULY, 2008, PURSUANT TO I.C. §§ 8-1-)
2-42 AND 8-1-2-42.3)

BY THE COMMISSION

Gregory D. Server, Commissioner

Loraine L. Seyfried, Administrative Law Judge

On March 3, 2008, Lawrenceburg Gas Company ("Petitioner") filed its petition with the Indiana Utility Regulatory Commission ("Commission") to adjust its gas cost factors in Cause No. 37368 GCA 98. Petitioner included in its petition a request to correct an alleged oversight which had occurred in previous gas cost adjustment ("GCA") applications, GCAs 88 through 94, relating to the total amounts of unaccounted-for gas shown on the Schedule 11s submitted in those GCAs. Petitioner proposed to reflect the result of these corrections as an adjustment to its next four GCA factors beginning with GCA 98.

On April 2, 2008, the Indiana Office of Utility Consumer Counselor ("OUCC") filed a motion seeking the creation of a subdocket for the purpose of determining the appropriate regulatory treatment of adjustments proposed on Petitioner's Schedule 11. Petitioner indicated that it did not object to the creation of a subdocket. On April 15, 2008, the Presiding Officers established this subdocket for the purpose of further considering Petitioner's proposed corrections.

Pursuant to notice duly published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a public hearing was held at 9:30 a.m., on May 1, 2008, in Room 224, National City Center, 101 West Washington Street, Indianapolis, Indiana. The Petitioner and the OUCC were present and participated.

Following the evidentiary hearing, Petitioner filed its proposed order on July 21, 2008. On August 8, 2008, the OUCC filed its proposed order, and on August 15, 2008, Petitioner filed its reply to the OUCC's proposed order.

Based upon the applicable law and the evidence presented herein, the Commission now finds:

1. **Notice and Jurisdiction.** Due, legal and timely notice of the hearing in this subdocket was given and published by the Commission as required by law. Petitioner operates a

public gas utility and, as such, is subject to the jurisdiction of this Commission as provided by the Public Service Commission Act, as amended. Specifically, Ind. Code § 8-1-2-42 provides Commission jurisdiction over GCA proceedings. Accordingly, this Commission has jurisdiction over the parties and the subject matter of this subdocket.

2. **Petitioner's Characteristics.** Petitioner is a corporation duly organized and existing under the laws of the State of Indiana, and has its principal office at 1155 Eads Parkway, Greendale, Indiana. Petitioner is engaged in rendering natural gas utility service to the public in Dearborn, Franklin, and Ohio Counties in Indiana; and owns, manages, and controls plant and equipment used for the distribution and furnishing of such services.

3. **Evidence Presented by the Parties.**

A. **Petitioner's Direct Evidence.** Petitioner sponsored the testimony and exhibits of its rate consultant, Kerry A. Heid. Mr. Heid testified that his review of Petitioner's records disclosed errors in the amounts of delivered gas volumes previously reported on Schedule 11, Line 4, for the reconciliation months of April 2005 through December 2006 as filed in Cause Nos. 37368 GCA 88 through GCA 94, respectively. Delivered gas volumes are used to determine the amount and cost of a utility's unaccounted-for gas. Some of the errors, such as in GCAs 89 and 93, resulted in an under-reporting of these costs, while the errors in GCAs 88, 90, 91, 92 and 94 had over-reported such costs. In total, Petitioner's unaccounted-for gas costs were apparently \$120,251 less than what the utility had previously stated over the seven quarters in question. Petitioner seeks approval to have its customers repay \$79,594, reflecting the amount they were undercharged after subtracting \$40,657 of the total \$120,251 to be refunded through a future Schedule 11A. To minimize the impact of this roughly \$80,000 net increase, Petitioner proposed to spread the increase equally across four consecutive quarters.

As Mr. Heid explained, the error stemmed from an incomplete accounting for certain cash-outs by Petitioner's natural gas supplier. In some months, the amount shown on the supplier's invoice and the amount actually delivered were not the same. The supplier then adjusted its bill the following month so that Petitioner was paying for all of the gas its customers actually consumed. The dollar adjustment was reflected elsewhere on Petitioner's GCA schedules, but because Petitioner's reporting of its delivered gas volumes on Line 4 of Schedule 11 were based on the amount of gas as shown on the initial invoice for that month, those Schedule 11s for GCAs 88 – 94 failed to capture the supplier's subsequent adjustment of the delivered volume amounts. Beginning in January, 2007, its supplier revised its invoices in order to reflect actual delivered volumes, thereby alleviating the need for a correction from that point forward.

B. **OUC's Direct Evidence.** The OUC sponsored testimony from its witness, Lianne N. Lockhart. Ms. Lockhart testified that the proposed correction should not be allowed because the GCAs in question had already been reconciled and audited by the OUC in accordance with Ind. Code § 8-1-2-42(g). She explained that an audit in this context consists of the OUC's review of all GCA schedules and tracing the numbers back to the documentation provided by Petitioner, *i.e.*, sales invoices, purchase invoices, transportation costs, etc. She testified that the relief requested by Petitioner – for a retroactive adjustment – should be denied.

because the rates previously established for the seven GCAs in question have been finalized and the rates are no longer interim and subject to refund.

C. Petitioner's Rebuttal Evidence. Mr. Heid opined that the denial of Petitioner's requested corrections in GCA 98 as proposed by the OUCC was contrary to the historical Commission practice of allowing prior period GCA corrections, which it has done since the inception of the GCA process in 1983. He testified that in his previous capacity as Director of Rates for Vectren, he personally prepared and presented GCA filings that included corrections to past GCAs, both in favor of the customer and in favor of the utility, and that in every case the proposed corrections were approved by this Commission without objection by the OUCC.

Mr. Heid asserted that correcting inaccurate data previously submitted does not constitute "retroactive ratemaking." He stated Petitioner's proposed corrections are distinct from the retroactive review of earnings associated with the GCA excess earning's test and the Commission's adoption of "interim" rates pending that subsequent earning's test review. According to Mr. Heid, whether interim GCA rates had subsequently been finalized has no bearing on whether an error should be corrected promptly upon its discovery. In addition, while admitting that he is not a lawyer, he cited to *Indiana Gas v. Utility Consumer Counselor*, 575 N.E.2d 1044, 1053 (Ind. Ct. App. 1991) as holding that the rule against retroactive ratemaking does not apply to GCA proceedings.

As for the specific corrections proposed in this subdocket, Mr. Heid described how they were presented to the Commission by Petitioner as part of the utility's first GCA filing since the discovery of the error. Mr. Heid also noted that the OUCC has not argued that the costs were imprudent or that the proposed corrections were erroneous. Nor did the OUCC argue that the statutory requirements of Ind. Code § 8-1-2-42(g)(3) were not satisfied.

D. Responses to Questions from the Bench. The Commission asked questions of each party's witness from the bench during the hearing. The presiding Administrative Law Judge asked Mr. Heid if he could elaborate on his opinion concerning the "routine practice" of correcting errors in summary GCA proceedings. Although he did not recall specific cause numbers when asked for examples on the stand, Petitioner included citations to several previous GCA Orders for Indiana Gas Company in its proposed order and included copies of the Commission's Orders in Cause Nos. 37394 GCA 71 and GCA 74.

Mr. Heid explained the proposed rate impact and effect on particular schedules in response to questions from the bench. The presiding Administrative Law Judge also asked why the need for the correction was not identified during the course of Petitioner's most recent general rate proceeding, Cause No. 43090, the evidence for which was filed in late 2006 and early 2007. Mr. Heid, who was also a witness for Petitioner in Cause No. 43090, responded that unaccounted-for gas calculations from Petitioner's GCA filings were not further examined during the course of preparing the evidence in that case.

Ms. Lockhart was asked by the presiding Administrative Law Judge when the OUCC last conducted an audit of Petitioner. She responded that the OUCC last conducted as an audit in

December, 2007, and that the OUCC conducts such routine checks of Petitioner's GCA cost support annually.

4. **Commission Discussion and Findings.** This subdocket concerns the appropriate response to Petitioner's discovery of an error in previously-approved GCAs. Petitioner is proposing to correct errors in seven of its previously approved GCA factors over a period beginning approximately three years ago, with two of the seven corrections in favor of Petitioner's customers and the remaining five in favor of the utility. By over-reporting, on balance, its total for unaccounted-for gas, Petitioner did not recover all of its costs of the gas it sold to customers.

Ind. Code § 8-1-2-42(g)(1) provides that, "...the commission shall hold a summary hearing on the sole issue of the gas cost adjustment." Like most other energy utilities, Petitioner files to adjust its GCA factor on a quarterly basis. This Indiana statute specifies that the OUCC review and report on the utility's application within thirty (30) days and further directs the Commission to issue its order within thirty (30) days after the OUCC's report. *Id.* Based on the expedited and summary nature of the GCA proceedings, the Commission has specified a series of schedules to be completed by the utility and included as part of its application.

The particular error at issue in this subdocket can be traced to the now-discontinued practice of Petitioner's gas supplier issuing an invoice for one month based on the amount of gas requested by Petitioner and then a revised invoice the following month if the actual delivered gas volumes varied from the amount requested. Petitioner was reflecting in its GCA filings its actual costs, but did not notice that the adjusted volumes were not being picked up when Petitioner reported its quarterly totals for unaccounted-for gas on Schedule 11 in seven of its GCA filings (*i.e.*, GCAs 88 through 94). As indicated above, Petitioner under-reported its amount of unaccounted-for gas in two of the seven GCA filings, and over-reported the amount in the other five GCAs. The net result was an over-reporting of Petitioner's total for unaccounted-for gas and an under-recovery of all its gas costs.

The OUCC raises two arguments against Petitioner making the corrections it now proposes. First, the OUCC argues that because each subsequent GCA order implicitly removes the "interim rates subject to refund" qualification as applied to the rates determined in the preceding GCA, Petitioner's corrections should be disallowed. As noted by Petitioner, the Commission's routine "interim" caveat is a function of the prospective application of the earnings test to the rates for the next quarter; once that quarter has concluded and actual earnings data are available for the previous quarter, a prospective adjustment is made to reflect the difference between what the rates were and what, in hindsight, they should have been. The earning test calculation is separate and distinct from any correction made to previous rates based on subsequently-identified errors in the evidence on which those rates had been based. Consequently, we find the OUCC's argument to be inapplicable to Petitioner's request in this proceeding.

Similarly, we find the Court of Appeals decision in *Indiana Gas v. Utility Consumer Counselor*, 575 N.E.2d 1044, 1053 (Ind. Ct. App. 1991) to be inapplicable. In making the statement that "the rule against retroactive ratemaking does not apply to GCA proceedings", the

Court was addressing arguments that the Commission's practice of setting "interim rates subject to refund" in the event of future over-earnings constituted retroactive ratemaking. As noted above, corrections to Petitioner's earnings for purposes of the statutory earnings test are not the issue we are presented with in this Cause.

The OUCC's second argument is that it has already reviewed Petitioner's evidence and reported the results of its analysis to the Commission in the GCAs in question, including performing its annual audit of Petitioner's GCA filings. It is the OUCC's position that Petitioner's request is, essentially, untimely. As Ms. Lockhart indicated in her direct testimony, an OUCC GCA audit consists of the OUCC's review of all GCA schedules and tracing the numbers back to the documentation provided by Petitioner. Therefore, the OUCC's audit for GCA purposes relies in part on the accuracy of the accounting numbers and documentation provided by the Petitioner. The OUCC's audit of GCA evidence is a useful and important check on utilities by the statutory public advocate to decrease the likelihood of errors. However, it is the Petitioner that is ultimately responsible for the accuracy of its books and records and the accuracy of the evidence that it submits to the Commission in each GCA filing, as well as its base rate cases. Consequently, if errors are contained in Petitioner's books and records, and those errors are not discovered in a timely manner, then Petitioner and its shareholders, not Petitioner's customers, should be responsible for the financial consequences of those errors.

With respect to Mr. Heid's assertion that the Commission has historically allowed prior period GCA corrections, we note that although Petitioner included citations to several previous GCA Orders for the Indiana Gas Company with its proposed order, Petitioner did not cite to specific language in any of these Orders that would support Petitioner's argument. In addition, the Commission's own somewhat limited review of the cited GCA Orders reveals no specific language supportive of the argument that allowing corrections such as Petitioner has proposed in this subdocket has been the Commission's routine practice.¹

Furthermore, neither of the two Orders attached to Petitioner's proposed order, Cause Nos. 37394 GCA 71 and GCA 74, supports Petitioner's position. Both of these Orders authorized the recovery of a portion of a large under-collection resulting from unexpectedly high gas prices during the winter of 2000 and 2001 in accordance with a settlement agreement approved in Cause No. 37394 GCA 70. In recognition of the fact that the normal GCA process for recovery of variances would hit customer bills the following winter and would place an undue burden on customers during months when their bills were already high, the settlement agreement allowed the prospective recovery of gas costs during typical non-heating periods.

While the Commission has, as noted by Petitioner, occasionally allowed a limited correction for an error made in a prior GCA proceeding as it did recently in *Indiana Natural Gas Corporation*, Cause No. 37418 GCA 97 (IURC, April 30, 2008) and *Southern Indiana Gas & Electric Company*, Cause No. 38708 FAC 78 (IURC, April 20, 2008), the Commission has also disallowed corrections, as it did in *Indiana Utilities Corporation*, Cause No. 37357 GCA 71

¹ We note that our review was somewhat limited as many of the documents filed in the cited cases are no longer available and have been destroyed in accordance with the Commission's document retention schedule.

(IURC, July 30, 2008). The Commission finds, based upon the facts presented in this case, that Petitioner's request to correct the errors that occurred in GCA 88 through GCA 94 is untimely and should be denied. Petitioner seeks to make corrections in GCA 98, which is a year after the errors (that continued over a year and a half period) had been made and more than a year after its gas supplier revised its invoices. We see no reason to allow at this time, corrections for such errors which could, and reasonably should, have been caught earlier, such as during the OUCC's audit, during Petitioner's preparation of its rate case, or when Petitioner's gas supplier revised its invoices in January 2007. As noted above, the GCA process is designed to be a summary proceeding and the further away in time that the errors occur, the more difficult it is to review whether such corrections should be made. Consequently, we find Petitioner's request to be untimely, and deny Petitioner's request to recover \$79,625 from its customers.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Lawrenceburg Gas Company's request to adjust prospectively its gas cost adjustment factor to reflect corrections to the Schedule 11s filed in its GCAs 88 through 94 is hereby denied.

2. This Order shall be effective on and after the date of its approval.

GOLC, LANDIS, SERVER AND ZIEGNER CONCUR; HARDY ABSENT:

APPROVED: OCT 15 2008

**I hereby certify that the above is a true
and correct copy of the order as approved.**


Brenda A. Howe
Secretary to the Commission